



TO: General Assembly, State of Vermont

FROM: Hon. Thomas A. Zonay, Chief Superior Judge
Chair, Vermont Sentencing Commission
(the “Commission”)

RE: Report of Vermont Sentencing Commission pursuant to Section 32 of Act 46
(2023) , *Vermont Sentencing Commission Report on Whether to Eliminate Cash
Bail*.

DATE: November 30, 2023

Report Requirements

Pursuant to Section 32 of Act 46 (2023), *Vermont Sentencing Commission Report on Whether to Eliminate Cash Bail*, the Vermont Sentencing Commission, in consultation with entities designated in the bill, was charged with identifying the conditions that would be required to move toward the elimination of the use of cash bail for the purpose of mitigating risk of flight from prosecution and make a recommendation as to whether cash bail should be eliminated in Vermont. The bill further directed that if the Commission proposed to eliminate cash bail, it was to provide a proposal that does so. The Commission’s Findings and Recommendations are required to be submitted to the General Assembly on or before December 1, 2023.

Membership

The Members of the Commission are:

- (1) Thomas A. Zonay, Chief Superior Judge (Chair)
- (2) Rebecca Turner, Office of the Defender General (vice-chair)
- (3) Superior Judge Mary Morrissey
- (4) Superior Judge John Treadwell
- (5) Senator Richard Sears/Senator Nader Hashim
- (6) Representative Barabra Rachelson
- (7) Erin Jacobsen, Attorney General's Office
- (8) Matthew Valerio, Defender General
- (9) Timothy Lueders-Dumont, Department of State's Attorney's
- (10) Marshal Pahl, Appellate Defender
- (11) Farzana Levya, Orleans County State's Attorney
- (12) Jordana Levine, Esq.
- (13) Joshua Rutherford/Lani Harrington, Department of Corrections
- (14) Rebecca Turner, Office of Defender General (vice-chair)
- (15) Tucker Jones, Department of Public Safety
- (16) Jennifer Poehlmann, Executive Director of the VT Ctr. for Crime Victim Services
- (17) Monica Weeber, Ex. Director of Vermont Crime Research Group

Commission Meetings

The Commission met on July 17, September 13, October 24 and November 6, 2023. In addition to the full Commission meetings, a subcommittee chaired by Judge John Treadwell was appointed and met on September 22 and October 6, 2023.

Commission Findings and Recommendations

a. Bail law in Vermont

Vermont law requires that an individual charged with an offense, other than an individual being held without bail pursuant to 13 V.S.A. § 7553 or 13 V.S.A. § 7553a, shall be ordered released on conditions imposed under 13 V.S.A. § 7554 unless the individual's right to bail has been revoked pursuant to 13 V.S.A. § 7575. Under § 7554 the court is required to consider a number of specified factors in determining whether a defendant presents a risk of non-appearance and/or a risk to public safety. 13 V.S.A. § 7554(a)(1); (a)(2).

If the court determines that a defendant presents a risk of nonappearance, it may impose "the least restrictive" conditions or combination of conditions that will assure the person's appearance. 13 V.S.A. § 7554(a)(1). A court may also impose conditions of release to protect

the public, but “the sole constitutionally legitimate purpose of monetary conditions of release is to provide ‘additional assurance of the presence of an accused.’ ” *State v. Pratt*, 2017 VT 9, ¶ 13 (citations omitted). “Therefore, bail may be used only to assure the defendant’s appearance in court and cannot be used as “a means of punishing the defendant, nor of protecting the public.” *Id.*; see also *State v. Wood*, 157 Vt. 286, 289 (1991) (“The imposition of \$5,000 bail in this case . . . would only protect the victim and the integrity of the judicial process if it could not be met. This may have been what the trial judge had in mind. Yet, the imposition of bail in an amount that cannot be raised by an accused, in order to obtain his incarceration, is precisely what the law forbids.”). As to the amount of bail, the Vermont Supreme Court has further held that while a court need not make a finding as to ability to pay the amount of bail imposed, “in light of our caselaw on the subject, bail requirements at a level a defendant cannot afford should be rare.” *Id.* at ¶ 9.

b. Information Received

Pursuant to the directive of the bill referring the bail question to the Commission, the Commission solicited input from representatives of the Vermont Network Against Domestic and Sexual Violence, the Community Justice Unit of the Office of the Attorney General, Vermont Legal Aid, the Vermont Office of Racial Equity, the Vermont chapter of the American Civil Liberties Union, the Vermont Freedom Fund; and national experts on bail reform. There were robust discussions in the meetings of the subcommittee and of the Commission. The information was provided in the form of written materials as well as oral presentations from certain entities. Members of the Commission also provided information, including data, for use in considering the question before the Commission.¹

c. Findings

In considering the question before it, the Commission members relied upon the information received, as well as their own expertise and experiences in Vermont. The consensus of the Commission is that there are components of the bail system that need to be evaluated and changed. One such area is individuals being held on low bail (i.e., \$200 or below) for extended periods of time without meaningful progress in their cases being made. The Commission believes that a system of bail review which assures that such cases are addressed, and the need for bail is reviewed automatically by the Court, should be considered and evaluated by the Legislature and/or the Court.

Insofar as the question as to whether the Commission recommends eliminating cash bail, no motions were made by any Commission members on that motion. As such, the Commission is not making any proposal to eliminate cash bail. Though no motions may have been made on the specific questions posed, it is clear that members of the Commission have varying opinions regarding whether cash bail should be eliminated and, if so, what would be needed to support such a change.

¹ Copies of information submitted to the Commission are not being submitted with this Report. Should the General Assembly request for them to be submitted the Commission will provide them.

The lack of a motion on the questions presented is fairly attributed to the consensus of the Commission that to meaningfully make any recommendations will require significantly more information and time to study the issue and consider the issue. Identified issues which would need further consideration include, but are not limited to:

- whether cash bail is effective and necessary to mitigate the risk of flight;
- if cash bail were eliminated, what alternatives exist to get people in the door for the initial court appearance;
- if cash bail were eliminated, how does the court assure that defendants who continually fail to appear for their hearings will appear;
- what is the impact of eliminating cash bail on getting fugitives returned to Vermont as well as extraditing fugitives arrested in Vermont; and
- what pre-trial monitoring, supports, and services would be necessary to have in place if cash bail were eliminated.

As the Vermont Supreme Court has noted, “Our constitutional values require that liberty is and must remain the norm and detention prior to trial or without trial is the carefully limited exception.” *State v. Sauve*, 159 Vt. 566, 574 (1993). The use of cash bail necessarily implicates these core constitutional values. The Commission is ready and willing to assist the Legislature in addressing Vermont’s bail laws.